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6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**
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9 Xochitl Enriquez,

10 Plaintiff,

11 v.

12 U.S. Collections West Incorporated, et al.,

13 Defendants.
14

No. CV-15-01863-PHX-GMS

ORDER

15 Pending before the Court is Defendants Alan Zimmerman and Alan H.
16 Zimmerman, P.C.'s (collectively "Zimmerman Defendants") motion to dismiss. (Doc.
17 46.) For the following reasons, the motion is granted.

18 **BACKGROUND**

19 On October 12, 2009, Plaintiff Xochitl Enriquez entered into a written lease
20 agreement with Desert Point Apartments ("DPA") for a residential apartment. (Doc. 37
21 at ¶ 4.) After Plaintiff abandoned the apartment, DPA sued Plaintiff for eviction and
22 obtained a money and possession judgment against Plaintiff in the amount of \$1,460.30
23 on July 26, 2010. (*Id.* at ¶¶ 5–8.) On August 11, 2010, DPA sent a demand letter to
24 Plaintiff, demanding \$2,251.38 in satisfaction of her lease obligation. (*Id.* at ¶ 11.)

25 However, on November 19, 2013, DPA assigned its judgment for collection to
26 U.S. Collections West Incorporated ("USCW"), who then hired the Zimmerman
27 Defendants to collect the judgment from Plaintiff. (*Id.* at ¶ 12.) On June 30, 2015, the
28 Zimmerman Defendants renewed the judgment in the amount of \$2,228.33 including

1 interest. (*Id.* at ¶ 14.) Subsequently, on July 21, 2015, the Zimmerman Defendants sent a
 2 demand to the Plaintiff (“the letter”) requesting this amount. (*Id.* at ¶15.) The single
 3 page letter consists of three paragraphs. The letter all in capital letters using a uniform
 4 size and typeface. It is not disputed by the parties that the text of the letter states:

5 PURSUANT TO A.R.S., 12-1598.03, DEMAND IS HEREBY
 6 MADE UPON YOU FOR PAYMENT OF THE JUDGMENT BALANCE
 7 OF \$2,228,33 OR A PAYMENT EACH AND EVERY PAYDAY OF 25%
 8 OF YOUR NON-EXEMPT WAGES COMMENCING WITHIN FIFTEEN
 (15) DAYS OF THE DATE OF THIS LETTER AND CONTINUING
 UNTIL THE JUDGMENT BALANCE PLUS INTEREST HAS BEEN
 PAID IN FULL.

9 YOU ARE FURTHER ADVISED THAT UNLESS YOU, WITHIN
 10 THIRTY (30) DAYS AFTER RECEIPT OF THIS NOTICE, DISPUTE
 11 VALIDITY OF THE DEBT, OR ANY PORTION THEREOF, WE WILL
 12 ASSUME THAT THE DEBT IS VALID. IF YOU NOTIFY THIS
 13 OFFICE IN WRITING WITHIN THE THIRTY DAY PERIOD THAT
 14 THE DEBT, OR ANY PORTION THEREOF, IS DISPUTED, WE SHALL
 15 OBTAIN VERIFICATION OF THE DEBT AND A COPY OF SUCH
 16 VERIFICATION WILL BE MAILED BY US TO YOU. IF YOU
 17 NOTIFY THIS OFFICE IN WRITING WITHIN THIS THIRTY (30) DAY
 18 PERIOD, WE WILL PROVIDE YOU THE NAME AND ADDRESS OF
 19 THE ORIGINAL CREDITOR IF DIFFERENT FOR [SIC] THE
 20 CURRENT CREDITOR. THIS COMMUNICATION IS FROM A DEBT
 21 COLLECTOR. THIS IS AN ATTEMPT TO COLLECT A DEBT. ANY
 INFORMATION OBTAINED WILL BE USED FOR THAT PURPOSE.

22 THE LAW DOES NOT REQUIRE ME TO WAIT UNTIL THE
 23 END OF THE THIRTY DAY PERIOD, BUT ONLY THE FIFTEEN DAY
 24 PERIOD, BEFORE COMMENCING WAGE GARNISHMENT
 25 PROCEEDINGS. IF, HOWEVER, YOU REQUEST PROOF OF THE
 26 DEBT OR THE NAME AND ADDRESS OF THE ORIGINAL
 27 CREDITOR WITHIN THE THIRTY DAY PERIOD THAT BEGINS
 28 WITH YOUR RECEIPT OF THIS LETTER, THE LAW REQUIRES ME
 TO SUSPEND MY EFFORTS (THROUGH LITIGATION OR
 OTHERWISE) TO COLLECT THE DEBT UNTIL I MAIL THE
 REQUESTED INFORMATION TO YOU.

(Doc. 46-1 at 2.)

On March 22, 2016, Plaintiff filed an Amended Complaint against the
 Zimmerman Defendants alleging that this letter violated the requirements of the Fair Debt
 Collection Practices Act (“FDCPA”) because the letter cited a state statute “in support of
 its allegation that Plaintiff was statutorily required to tender 25% of her take home pay to
 USCW.” (Doc. 37 at ¶¶ 15, 24.). Plaintiff also alleges that the “demand letter also
 violated the FDCPA by overshadowing her right to dispute the alleged debt within thirty

1 days from receipt of the letter” by suggesting that Defendants would begin garnishment
 2 proceedings within fifteen days if she had not otherwise agreed to pay the debt in its
 3 entirety or pay installments thereon. (*Id.* at ¶¶ 16, 24.)

4 Neither of these assertions withstands Defendants’ motion to dismiss.

5 DISCUSSION

6 I. Legal Standard

7 The Parties have submitted a copy of the letter upon which Plaintiff bases her
 8 claim without dispute. And whether the text of a demand letter violates the FDCPA is a
 9 question of law for the court. *Terran v. Kaplan*, 109 F.3d 1428, 1432 (9th Cir. 1997). A
 10 communication from a creditor to a debtor violates the FDCPA if the communication was
 11 “likely to deceive or mislead a hypothetical ‘least sophisticated debtor.’” *Wade v. Reg’l*
 12 *Credit Ass’n*, 87 F.3d 1098, 1100 (9th Cir. 1996) (quoting *Swanson v. S. Or. Credit Serv.,*
 13 *Inc.*, 869 F.2d 1222, 1225 (9th Cir. 1988)). “The objective least sophisticated debtor
 14 standard is ‘lower than simply examining whether particular language would deceive or
 15 mislead a reasonable debtor.’” *Terran*, 109 F.3d at 1432–33 (quoting *Swanson*, 869 F.2d
 16 at 1227). Rather, notice must be effectively conveyed to a debtor, large enough to be
 17 easily read, and not overshadowed or contradicted by other messages from the debt
 18 collectors. *Id.*

19 II. Analysis

20 The validation provisions of the FDCPA require that the Plaintiff have thirty days
 21 in which to contest a debt. However, the FDCPA explicitly authorizes creditors to
 22 continue debt collection activity during this thirty day period. 15 U.S.C. § 1692g(b)
 23 (“Collection activities and communications that do not otherwise violate this subchapter
 24 may continue during the 30-day period”); *see also Sims v. GC Servs. L.P.*, 445 F.3d
 25 959, 965 (7th Cir. 2006).¹

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 27 ¹ The Zimmerman Defendants claim that as subsequent debt collectors they were not
 28 required by the FDCPA to give Plaintiff a validation notice at all. After this motion was
 briefed, the Ninth Circuit held otherwise, finding that “Congress’s intent to require *each*
 debt collector to send a validation notice with its initial communication is clear from the

1 Plaintiff provides no argument or authority to suggest that Defendants could not
 2 undertake the state statutory prerequisites to garnishment during the thirty day statutory
 3 period. Plaintiff does argue, however, that when the Defendants informed her that they
 4 intended to begin garnishment proceedings within fifteen days of their notice, they
 5 “overshadowed” Plaintiff’s right to have thirty days in which to contest the debt. But that
 6 argument is not persuasive. To accept that argument would rebalance the statutory rights
 7 of creditors and debtors in a way that would contradict the balance struck in the statute.

8 Further, the letter does not misdescribe the rights of the Plaintiff. As the letter
 9 clearly explains, even had the Zimmerman Defendants begun garnishment proceedings
 10 prior to the expiration of the thirty day period, they would have had to halt them if
 11 Plaintiff timely contested the debt.

12 IF, HOWEVER, YOU REQUEST PROOF OF THE DEBT OR THE
 13 NAME AND ADDRESS OF THE ORIGINAL CREDITOR WITHIN THE
 14 THIRTY DAY PERIOD THAT BEGINS WITH YOUR RECEIPT OF
 15 THIS LETTER, THE LAW REQUIRES ME TO SUSPEND MY
 16 EFFORTS (THROUGH LITIGATION OR OTHERWISE) TO COLLECT
 17 THE DEBT UNTIL I MAIL THE REQUESTED INFORMATION TO
 18 YOU.

16 (Doc. 46-1 at 2.) This is an accurate statement of the Plaintiff’s rights and the
 17 Defendants’ obligations under the law.

18 The letter further provided “transitional language that referred the addressee to the
 19 validation notice” in a way that “effectively inform[ed] [the] consumer as to . . . her
 20 rights under the FDCPA without imposing an undue burden on a debt collector’s
 21 legitimate efforts to obtain the prompt payment of debts.” *Savino v. Comput. Credit, Inc.*,
 22 164 F.3d 81, 86 (2d Cir. 1988). The letter’s language is closely akin if not almost
 23 identical to the “safe harbor” language set forth by the Seventh Circuit in *Bartlett v.*
 24 *Heibl*, 128 F.3d 497, 501–02 (7th Cir. 1997). And, even acknowledging that such “safe

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 27 statutory text.” *Hernandez v. Williams, Zinman & Parham PC*, 829 F.3d 1068, 1079 (9th
 28 Cir. 2016) (emphasis added). Thus, the Court decides the Motion based on Defendants’
 assertion that it complied with all relevant validation requirements of the statute to the
 extent those arguments were controverted by the Plaintiff.

1 harbor” precedent is not binding on this Court, the language in this circumstance
2 nevertheless accurately and fairly describes the nature of Plaintiff’s notice rights to the
3 Plaintiff. As such it does not violate the least sophisticated consumer standard which still
4 “preserv[es] a quotient of reasonableness and presume[es] a basic level of understanding
5 and willingness to read with care.” *Gonzales v. Arrow Fin. Servs., LLC*, 660 F.3d 1055,
6 1062 (9th Cir. 2011) (quoting *Rosenau v. Unifund Corp.*, 539 F.3d 218, 221 (3d Cir.
7 2008)). Because the provisions of the letter that explained the verification provisions
8 were in no way overshadowed either in format or in substance in the letter, Plaintiff’s
9 argument that the letter “overshadowed” her verification rights under the FDCPA is
10 without merit.

11 Further, as the disputed letter suggests, state law requires the Defendant to make a
12 demand on the Plaintiff for payment or payments before it could seek to garnish her
13 wages. A.R.S. § 12-1598.03. Plaintiff’s Amended Complaint asserts that the letter cites
14 the Arizona statute “in support of its allegation that Plaintiff was statutorily required to
15 tender 25% of her take home pay to USCW.” (Doc. 37 at ¶¶ 15, 24.). But literally read,
16 as the Plaintiff apparently concedes, the letter does not so state. Nor does the letter
17 demand that payment be made “immediately.” Instead it demands payment to be made in
18 the full amount of \$2,228.33 or spread out over a period of time with 25% of Plaintiff’s
19 nonexempt wages going to the Zimmerman Defendants until the debt is paid off. A.R.S.
20 § 12-1598.03 specifically requires a demand for payment in full or periodic payments of
21 the debtor’s non-exempt wages before a creditor can pursue garnishment.

22 Plaintiff asserts that the wording of the sentence might nevertheless be confusing
23 to a “least sophisticated debtor,” and that such a debtor might interpret the sentence’s
24 citation of the statute for a purpose other than identifying the state law with which
25 Defendants were complying by making the demand for payment—such as an
26 interpretation that the statute required immediate payment or payment of 25% of non-
27 exempt wages. Nevertheless, the least sophisticated debtor standard is still an objective
28 standard. Pulling out hypotheticals as to how some unsophisticated debtor might

1 interpret the statute does not necessarily meet the objective standard especially when it
2 does not accurately account for the text of the statement itself. The least sophisticated
3 debtor standard “does not subject debt collectors to liability for ‘bizarre,’ ‘idiosyncratic,’
4 or ‘peculiar’ misinterpretations.” *Gonzales*, 660 F.3d at 1062 (quoting *Rosenau*, 539
5 F.3d at 221). Defendants, after all, are required to comply with the terms of the Arizona
6 statute to implement garnishment, and are not required to wait thirty days before doing
7 so. In the absence of identifying with some specificity how the Defendants’ statements
8 either constituted an actual misstatement of the law, or a statement that was sufficiently
9 confusing so the least sophisticated consumer would misinterpret the statute in an
10 identifiable way, Plaintiffs have not met their burden.

11 Even assuming that the sentence was an actual misstatement or that it would likely
12 be misinterpreted by the least sophisticated debtor to be so, the Plaintiff would still have
13 to demonstrate that such a statement is material. “[F]alse but non-material
14 representations are not likely to mislead the least sophisticated consumer and therefore
15 are not actionable under § [] 1692e.” *Donohue v. Quick Collect, Inc.*, 592 F.3d 1027,
16 1033 (9th Cir. 2010). The Plaintiff has failed to demonstrate to this Court’s satisfaction
17 any specific misinterpretation amounting to a misstatement that the least sophisticated
18 debtor would likely make with respect to this sentence. Even had she done so, there are
19 no allegations in the complaint that such a hypothetical misinterpretation by a least
20 sophisticated debtor would be material.²

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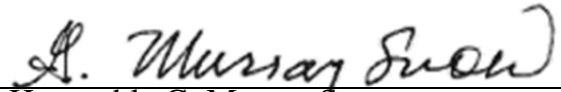
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27 ² Further, Plaintiff has not made sufficient allegations of fact to suggest that any such a
28 misinterpretation on her part would give rise to any concrete injury sufficient to grant her
standing pursuant to *Spokeo, Inc. v. Robins*, 136 S.Ct. 1540 (2016), which was decided
after the motion to dismiss was submitted.

1 **IT IS THEREFORE ORDERED** that Defendants' motion to dismiss (Doc. 46)
2 pursuant to Rule 12(b)(6) is **GRANTED**. The Clerk of Court is directed to enter
3 judgment accordingly.

4 Dated this 15th day of December, 2016.

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6 
7 Honorable G. Murray Snow
 United States District Judge